I. Claims Rejected Under 35 U.S.C. § 103

The Examiner has rejected Claims 1-6, 11, 16, 17, 24, 26, 27, 29-31 and 34 under 35 U.S.C. 103 as being unpatentable over Huegel U.S. Patent No. 5,239,480 ("Huegel"). Applicants respectfully traverse this rejection.

To make out a prima facie case of obviousness, the Examiner must show that every element of the claim is taught or suggested by the references relied upon At least two aspects of independent Claim 1 are neither taught nor suggested by Huegel. First, there is no teaching or suggestion in Huegel of "a client node unaffiliated with the server" displays information to aid a user in "determining a best then available space conforming to a need of the end user." The reference also fails to teach or suggest "providing over the wide-area network to the end user the capability of interactively selecting one of time, space and a seat of choice" (Emphasis added). The Examiner has previously admitted that Huegel fails to disclose even the notion of an unaffiliated client node as claimed. However, the Examiner asserts that she is absolved of her burden on this matter by virtue of a passing reference to on-line banking websites with the subsequent assertion that because providing the access claimed by Applicant would reduce the limitation of end users to locality of the self service terminal, Applicant's claim would be obvious. Thus, the Examiner's assertions, even if true, boil down to little more than a determination that it would be obvious to try to provide that which Applicant discloses and claims. However, assuming arguendo, "obviousness to try," both the Federal Circuit Court of Appeals and its predecessor Court have explicitly excluded this as a standard on which a

rejection under 35 U.S.C. §103 may be based. Moreover, the Board of Patent Appeals and Interferences has held that:

> "... that which is within the capabilities of one skilled in the art is not synonymous with obviousness ..." Ex Parte Levengood, 28 USPQ 2d 1300, 1302 (Bd. Pat. App. & Inter. 1993).

The Examiner's agreement with the truth of Applicants' statement that "problems and requirements where no dedicated hardware or software exists on the client end are very different from the environment of Huegel in which the entire client is dedicated" belies the position the Examiner is now taking.

Moreover, the ability to select a seat of choice from a best then available space conforming to the needs of an end user is neither taught nor suggested by Huegel. Huegel teaches that the user is constrained to select a general area in which he or she desires to sit. See Huegel column 8, lines 41-44, column 9, lines 7-10, 25-27. The location processor uses a selection algorithm to select individual seats on a user's behalf. Id. The Examiner's assertion that it is known to select between an aisle seat in first class and an aisle seat in coach on a commercial airline does not change this fact. Particularly, this is merely the notion of two "sections." Moreover, the Examiner has failed to tie the notion of unique seat selection to an automated system of Huegel otherwise. Nevertheless, following this logic, the Examiner does not even assert that one is able to choose between seats, e.g., 10C and 10D on a 737 commercial airliner (both are aisle seats). However, 10C may be more desirable for, e.g., a right handed customer. No reference cited by the Examiner nor any official notice that can validly be taken and combined with Huegel either teaches or suggests

this granularity of seat selection. Again, the Examiner's assertion is tantamount to an assertion that is obvious to try which even if true is not dispositive. In summary, the Examiner has failed to make a prima facie case of obviousness of Claim 1 (and therefore its dependent claims) as rendered obvious by Huegel. Accordingly, Applicant respectfully requests the rejection be withdrawn.

Claim 24 is patentable for analogous reasons. The Examiner rejected Claim 25 under 35 U.S.C. §103(a) as being unpatentable over Huegel in view of Merrill, et al., U.S. Patent No. 5,333,257 ("Merrill"). Applicants respectfully traverse this rejection. Applicant submits that Merrill fails to cure the deficiencies discussed above in connection with Huegel. Accordingly, withdrawal of the rejection is respectfully requested.

The Examiner rejected claims 28, 32, and 33 under 35 U.S.C. §103(a) as being unpatentable over Huegel in view of Merrill and Bricklin, U.S. Patent No. 5,611,430 ("Bricklin"). Applicants respectfully traverse these rejections. The addition of Bricklin fails to cure the deficiencies discussed above. Thus, this rejection should also be withdrawn.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference

would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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Dated: 12/28/01

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CERTIFICATE OF FACSIMILE TRANSMISSION:
I hereby certify that this correspondence is being facsimile transmitted to: Box Non-Fee Amendment, Assistant Commissioner for Patents at (703) 308-9051 on December 28, 2001.

Susan M. Ocegueda 12/28/01
Susan M. Ocegueda Date